

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: ICC-01/04-01/07
Date: 7 February 2019

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Confidential

**Order Directing the Trust Fund for Victims to File a Progress Report on the
Implementation of Collective Reparations and the Next Steps and Activities
Planned**

Order to be notified in accordance with regulation 31 of the Regulations of the Court to:

Legal Representatives of Victims

Mr Fidel Nsita Luvengika

Counsel for the Defence of Germain

Katanga

Mr David Hooper

Ms Caroline Buisman

Office of Public Counsel for Victims

Ms Paolina Massidda

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

TRIAL CHAMBER II ("Chamber") of the International Criminal Court, in the case of *The Prosecutor v. Germain Katanga*, orders as follows.

I. PROCEDURAL HISTORY

1. On 24 March 2017, the Chamber pronounced its "Order for Reparations pursuant to Article 75 of the Statute" ("Order for Reparations").¹ In the order, the Chamber analysed the 341 dossiers of individuals claiming to be victims of the crimes of which Germain Katanga ("Mr Katanga") was convicted, which the Registry had transmitted to it.² The Chamber found that, of those 341 individuals, 297 had shown to the standard of proof of a balance of probabilities that they had suffered harm as a result of the crimes of which Mr Katanga was convicted.³ Accordingly, the Chamber found them to be eligible for the individual and collective reparations approved by the Chamber in the case.⁴

2. On 25 July 2017, pursuant to the Order for Reparations, the Trust Fund for Victims ("Trust Fund") submitted its draft implementation plan ("DIP")⁵ to the Chamber. On 11 September 2017, the Legal Representative of Victims ("Legal Representative")⁶ and the Defence⁷ filed their respective observations on the DIP. On

¹ "Order for Reparations pursuant to Article 75 of the Statute", ICC-01/04-01/07-3728-tENG, with one public annex (Annex I) and one confidential annex *ex parte*, Common Legal Representative of the Victims, Office of Public Counsel for Victims and Defence team for Germain Katanga (Annex II).

² Order for Reparations, paras. 64-180.

³ Order for Reparations, para. 168.

⁴ Order for Reparations, paras. 281-295.

⁵ "Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728)", 25 July 2017, ICC-01/04-01/07-3751-Conf (the French translation was notified on 21 August 2017), with one confidential annex (Annex 1), one public annex (Annex 2), one confidential annex *ex parte*, Registry (Annex 3), one confidential annex *ex parte*, Principal Counsel, Office of Public Counsel for Victims (Annex 4) and one confidential annex *ex parte*, Legal Representative (Annex 5).

⁶ "Observations relatives au projet de plan de mise en œuvre déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/04-01/07-3751-Red)", 11 September 2017, ICC-01/04-01/07-3763-Conf ("Legal Representative's Observations of 11 September 2017")

⁷ "Defence Observations on the TFFV's Draft implementation plan", 11 September 2017, ICC-01/04-01/07-3764.

9 October 2017, the Legal Representative and the Trust Fund filed additional joint submissions on the DIP.⁸

3. On 12 October 2017, the Chamber delivered the "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations" ("Decision of 12 October 2017").⁹

4. On 4 December 2017, the Trust Fund filed a report on the implementation of individual reparations and on the additional information requested by the Chamber ("Trust Fund Report of 4 December 2017").¹⁰ On 13 December 2017, the Legal Representative filed his observations on the Trust Fund Report of 4 December 2017.¹¹

5. On 20 September 2018, the Chamber directed the Trust Fund to provide it with information on the modalities for collective reparations, in particular, a summary of the latest developments, the decision of the Trust Fund's Board of Directors on the question of assumption of support costs, the updated budget and a specification of the processes planned and the entities/persons which/who would be responsible for putting into effect the reparations modalities as well as the implementation schedule contemplated.¹²

⁸ "Joint Submission Concerning the Draft Implementation Plan Filed by the Trust Fund for Victims in Conformity with the Order for Reparations Pursuant to Article 75 of the Statute (ICC-01/04-01/07-3751-Red)", 9 October 2017, ICC-01/04-01/07-3767-Conf-tENG.

⁹ "Decision approving the Implementation of Individual Reparations and instructing the Trust Fund for Victims to Transmit to it Additional Information on the Implementation of Collective Reparations", 12 October 2017, ICC-01/04-01/07-3768-Conf-tENG.

¹⁰ "Report on the Trust Fund's execution of the payment of the individual reparations awards and additional information regarding the implementation of the collective reparations awards in compliance with Trial Chamber II's decision of 12 October 2017", 4 December 2017, ICC-01/04-01/07-3772-Conf.

¹¹ "*Observations relatives au Rapport du Fonds au profit des victimes du 4 décembre 2017* (ICC-01/04-01/07-3772-Conf)", 13 December 2017, ICC-01/04-01/07-3773-Conf.

¹² "Order Directing the Trust Fund for Victims to File Information on the Modalities of Collective Reparations", 20 September 2018, ICC-01/04-01/07-3809-Conf-tENG, para. 15.

6. On 1 October 2018, the Legal Representative filed his report on the award of individual and collective reparations ("Legal Representative's Report of 1 October 2018").¹³

7. On 3 October 2018, after having been granted an extension of time,¹⁴ the Trust Fund filed information on the modalities of implementation of collective reparations.¹⁵ ("Trust Fund Report of 3 October 2018").

8. On 11 October 2018, the Office of Public Counsel for Victims ("OPCV") filed its observations on the Draft Memorandum ("OPCV's Observations").¹⁶

9. On 22 November 2018, the Legal Representative filed observations on the Trust Fund Report of 3 October 2018, expressing concern about what he considers to be the lack of progress in the implementation process over all modalities, except for the education assistance modality, and the absence of an implementation schedule.¹⁷

10. On 6 December 2018, the Trust Fund filed an updated progress report on the implementation of the education assistance modality¹⁸ ("Trust Fund Report of 6 December 2018"). The Trust Fund also informed the Chamber that it was preparing the next phase of implementation and that it would file a report containing more detailed information on this subject in early 2019.¹⁹

¹³ *"Rapport sur l'octroi des réparations individuelles et collectives et dépôt d'un projet de mémorandum de collaboration entre le Représentant légal et le Fonds au profit des victimes"*, 1 October 2018, ICC-01/04-01/07-3810-Conf.

¹⁴ Email from the Chamber to the Trust Fund sent on 28 September 2018 at 12.48. Email from the Trust Fund to the Chamber sent on 28 September 2018 at 8.00.

¹⁵ "Information relevant to the modalities of implementation of collective reparations With Confidential annex A: Revised budget", dated 2 October 2018 and registered on 3 October 2018, ICC-01/04-01/07-3811-Conf with one confidential annex.

¹⁶ *"Observations concernant le 'Rapport sur l'octroi des réparations individuelles et collectives et dépôt d'un projet de mémorandum de collaboration entre le Représentant légal et le Fonds au profit des victimes'"*, 11 October 2018, ICC-01/04-01/07-3812-Conf.

¹⁷ *"Soumission du Représentant légal relative à la mise en œuvre des réparations collectives"*, 22 November 2018, ICC-01/04-01/07-3815-Conf, with four confidential annexes.

¹⁸ "Update report on the implementation of the education assistance modality of the collective reparations awards pursuant to regulation 58 of the Regulations of the Trust Fund for Victims", 6 December 2018, ICC-01/04-01/07-3818-Conf.

¹⁹ Trust Fund Report of 6 December 2018, para. 33.

11. On 14 December 2018, the Legal Representative filed submissions presenting the victims' concerns about progress in the implementation of collective reparations, together with a letter annexed thereto from the victims and addressed to both the Trust Fund and the Chamber, as well as the Legal Representative's response to that letter²⁰ ("Legal Representative's Submissions of 14 December 2018"). The Legal Representative's filing also contains details of the implementation of reparations.

ANALYSIS

12. As a preliminary matter, the Chamber notes that the Trust Fund Report of 3 October 2018 and the Trust Fund Report of 6 December 2018 refer to the implementation of the education assistance modality of the collective reparations award. It notes with satisfaction the progress made by the Trust Fund, the Legal Representative and the OPCV, while highlighting the difficulties and obstacles encountered.

13. Nevertheless, the Chamber recalls that, in the Order of 20 September 2018, it emphasized that it was yet to approve the implementation of collective reparations since it had not obtained the information requested.²¹ In the same Order, the Chamber stated that it had directed the Trust Fund to provide it with a specification of the processes planned and the entities/persons which/who would be responsible for putting into effect the project, as well as the implementation schedule contemplated.²² The Chamber also stated that it was prepared to approve the implementation of each collective reparations modality separately in order not to delay the start of implementation any further.²³

14. In that connection, the Chamber reiterates that in order for it to fully exercise its role of monitoring and supervising the implementation of reparations and to facilitate communication and collaboration between the Legal Representative, the

²⁰ "Communication du Représentant légal relative aux vœux et préoccupations des victimes bénéficiaires de réparation", 14 December 2018, ICC-01/04-01/07-3819-Conf.

²¹ Order of 20 September 2018, para. 12.

²² Order of 20 September 2018, para. 15.

²³ Order of 20 September 2018, para. 16.

OPCV and the Trust Fund, the Trust Fund is directed to present the information it has requested before implementation of the collective reparations modality begins. The Chamber will then hasten to approve the implementation of the modality concerned.

15. In addition, the Chamber notes the concerns of the beneficiaries regarding the time that has elapsed since they made their choices regarding modalities of collective reparations.²⁴ The Chamber is also aware of the workload arising for the Trust Fund out of its decision to directly implement some of the modalities of collective reparations.²⁵ The Chamber further notes that the Trust Fund intends to rely on a partner to implement the housing support modality,²⁶ which will involve a tender process and, consequently, additional delays in implementation of this modality.

16. The Chamber notes, in this regard, that in view of the difficulties encountered and the concerns and doubts expressed by the beneficiaries, the Legal Representative suggests that alternatives to the modalities of collective reparations set in the Order for Reparations be explored.²⁷ The Legal Representative suggests, for instance, the conversion of certain modalities of collective reparations into financial compensation by applying a monitoring system to ensure that the financial compensation is used for purposes consistent with the objectives set in the Chamber's Order for Reparations.²⁸

17. The Chamber recalls in this context that, having stated that it was not possible to implement a programme outside the Democratic Republic of the Congo ("DRC") based on the modalities of collective reparations set by the Chamber in its Order for Reparations, the Trust Fund and the Legal Representative suggested to the Chamber an alternative consisting in granting each beneficiary residing outside the DRC

²⁴ Legal Representative's Submissions of 14 December 2018.

²⁵ Trust Fund Report of 3 October and Trust Fund Report of 6 December 2018.

²⁶ Trust Fund Report of 3 October 2018, paras. 29-31.

²⁷ Legal Representative's Submissions of 14 December 2018, para. 32.

²⁸ Legal Representative's Submissions of 14 December 2018, para. 32.

symbolic compensation, on an exceptional basis, in addition to the USD 250 ordered by the Chamber.²⁹ The Chamber recalls that, during joint missions undertaken by the Legal Representative and the Trust Fund for the purpose of implementing individual reparations, they gave the beneficiaries concerned a sum of money equivalent in value to the collective reparation awarded to each of them depending on their category, by way of collective reparations.³⁰ The Chamber notes that this happened before the Chamber had approved the implementation of collective reparations.

18. After having carefully examined the latest submissions of the Legal Representative and those of the Trust Fund, the Chamber directs the Trust Fund to include the following in its next report:

- (1) A summary of the latest developments since the Trust Fund's Report of 6 December 2018;
- (2) A detailed breakdown of the next modality or modalities of collective reparations that the Trust Fund intends to implement, including processes planned and the entities/persons which/who will be responsible for putting into effect the modality or modalities concerned as well as the implementation schedule contemplated, in order that the Chamber may approve implementation;
- (3) A general schedule breaking down the next activities and steps contemplated by the Trust Fund concerning the implementation of collective reparations; and
- (4) Observations on the possibility of converting certain modalities of collective reparations into financial compensation, taking into account the difficulties raised by the Legal Representative and the Trust Fund, as well as on the feasibility and appropriateness of setting up a monitoring system to ensure that the financial compensation is used for purposes consistent with the objectives set by the Chamber in the Order for Reparations.

²⁹ DIP, paras. 60-61. Trust Fund Report of 5 December 2017, paras. 29-35. Legal Representative's Observations of 11 September 2017, paras. 20, 25.

³⁰ Trust Fund Report of 3 October 2018, paras. 17-18. Legal Representative's Report of 2 October 2018, paras. 12 and 15-20.

FOR THESE REASONS, the Chamber

DIRECTS the Trust Fund to file the information listed in paragraph 18 above by
28 February 2019.

Done in both English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut
Presiding Judge

[signed]

Judge Olga Herrera Carbuccion

[signed]

Judge Péter Kovács

Dated this 7 February 2019
At The Hague, Netherlands